

(v) Consistent with Section 8(c) of Public Law 100–504, the IG DoD shall be authorized to send one or more observers to attend all SAPR IPT meetings in order to monitor and evaluate program performance.

(2) *Duties.* The SAPR IPT shall:

(i) Through the chair, advise the USD(P&R) and the Secretary of Defense on SAPR IPT meeting recommendations on policies for sexual assault issues involving persons covered by this part.

(ii) Serve as the implementation and oversight arm of the DoD SAPR Program. Coordinate policy and review the DoD's SAPR policies and programs consistent with this part and 32 CFR part 103, as necessary. Monitor the progress of program elements.

(iii) Meet every other month. Ad hoc meetings may be scheduled as necessary at the discretion of the chair. Members are selected and meetings scheduled according to the SAPR IPT Charter.

(iv) Discuss and analyze broad SAPR issues that may generate targeted topics for WIPTs. WIPTs shall focus on one select issue, be governed by a charter with enumerated goals for which the details will be laid out in individual work plans (see §105.3), and be subject to a definitive timeline for the accomplishment of the stated goals. Issues that cannot be resolved by the SAPR IPT or that require higher level decision making shall be sent to the USD(P&R) for resolution.

(3) *Chair duties.* The chair shall:

(i) Advise the USD(P&R) and the Secretary of Defense on SAPR IPT recommendations on policies for sexual assault issues involving persons covered by this part.

(ii) Represent the USD(P&R) in SAPR matters consistent with this part and 32 CFR part 103.

(iii) Oversee discussions in the SAPR IPT that generate topics for WIPTs. Provide final approval for topics, charters, and timelines for WIPTs.

§105.8 Reporting options and Sexual Assault Reporting Procedures.

(a) *Reporting options.* Service members and military dependents 18 years and older who have been sexually assaulted have two reporting options:

Unrestricted or Restricted Reporting. Unrestricted Reporting of sexual assault is favored by the DoD. However, Unrestricted Reporting may represent a barrier for victims to access services, when the victim desires no command or DoD law enforcement involvement. Consequently, the DoD recognizes a fundamental need to provide a confidential disclosure vehicle via the Restricted Reporting option. Regardless of whether the victim elects Restricted or Unrestricted Reporting, confidentiality of medical information shall be maintained in accordance with DoD 6025.18-R.⁶ DoD civilian employees and their family dependents and DoD contractors are only eligible for Unrestricted Reporting and for limited emergency care medical services at an MTF, unless that individual is otherwise eligible as a Service member or TRICARE beneficiary of the military health system to receive treatment in an MTF at no cost to them.

(1) *Unrestricted Reporting.* This reporting option triggers an investigation, command notification, and allows a person who has been sexually assaulted to access medical treatment and counseling. When a sexual assault is reported through Unrestricted Reporting, a SARC shall be notified, respond or direct a SAPR VA to respond, assign a SAPR VA, and offer the victim healthcare treatment and a SAFE. The completed DD Form 2701, which sets out victims' rights and points of contact, shall be distributed to the victim in Unrestricted Reporting cases by DoD law enforcement agents. If a victim elects this reporting option, a victim may not change from an Unrestricted to a Restricted Report.

(2) *Restricted Reporting.* This reporting option does not trigger an investigation. The command is notified that "an alleged sexual assault" occurred, but is not given the victim's name or other personally identifying information. Restricted Reporting allows Service members and military dependents who are adult sexual assault victims to confidentially disclose the assault to specified individuals (SARC, SAPR VA, or healthcare personnel) and receive

⁶ Available: <http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf>.

healthcare treatment and the assignment of a SARC and SAPR VA. When a sexual assault is reported through Restricted Reporting, a SARC shall be notified, respond or direct a SAPR VA to respond, assign a SAPR VA, and offer the victim healthcare treatment and a SAFE. The Restricted Reporting option is only available to Service members and adult military dependents. Restricted Reporting may not remain an option in a jurisdiction that requires mandatory reporting, or if a victim first reports to a civilian facility or civilian authority, which will vary by state, territory, and oversees agreements. (See §105.8(a)(6).) If a victim elects this reporting option, a victim may change from Restricted Report to an Unrestricted Report.

(i) Only the SARC, SAPR VA, and healthcare personnel are designated as authorized to accept a Restricted Report. Healthcare personnel, to include psychotherapist and other personnel listed in Military Rules of Evidence (MRE) 513 pursuant to the Manual for Courts-Martial, United States, who received a Restricted Report shall immediately call a SARC or SAPR VA to assure that a victim is offered SAPR services and so that a DD Form 2910 can be completed.

(ii) A SAFE and the information contained in its accompanying Kit are provided the same confidentiality as is afforded victim statements under the Restricted Reporting option. See §105.12 of this part.

(iii) In the course of otherwise privileged communications with a chaplain or legal assistance attorney, a victim may indicate that he or she wishes to file a Restricted Report. If this occurs, a chaplain and legal assistance attorney shall facilitate contact with a SARC or SAPR VA to ensure that a victim is offered SAPR services and so that a DD Form 2910 can be completed. A chaplain or legal assistance attorney cannot accept a Restricted Report.

(iv) A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication between a victim and a victim advocate, in a case arising under the UCMJ, if such communication is made for the purpose of facili-

tating advice or supportive assistance to the victim.

(v) A sexual assault victim certified under the personnel reliability program (PRP) is eligible for both the Restricted and Unrestricted reporting options. If electing Restricted Reporting, the victim is required to advise the competent medical authority of any factors that could have an adverse impact on the victim's performance, reliability, or safety while performing PRP duties. If necessary, the competent medical authority will inform the certifying official that the person in question should be temporarily suspended from PRP status, without revealing that the person is a victim of sexual assault, thus preserving the Restricted Report.

(3) *Non-participating victim* (see §105.3). For victims choosing either Restricted or Unrestricted Reporting, the following guidelines apply:

(i) Details regarding the incident will be limited to only those personnel who have an official need to know. The victim's decision to decline to participate in an investigation or prosecution should be honored by all personnel charged with the investigation and prosecution of sexual assault cases, including, but not limited to, commanders, DoD law enforcement officials, and personnel in the victim's chain of command. If at any time the victim who originally chose the Unrestricted Reporting option declines to participate in an investigation or prosecution, that decision should be honored in accordance with this subparagraph. However, the victim cannot change from an Unrestricted to a Restricted Report. The victim should be informed by the SARC or SAPR VA that the investigation may continue regardless of whether the victim participates.

(ii) The victim's decision not to participate in an investigation or prosecution will not affect access to SARC and SAPR VA services or medical and psychological care. These services shall be made available to all eligible sexual assault victims.

(iii) If a victim approaches a SARC and SAPR VA and begins to make a report, but then changes his or her mind and leaves without signing the DD

Form 2910 (where the reporting option is selected), the SARC or SAPR VA is not under any obligation or duty to inform investigators or commanders about this report and will not produce the report or disclose the communications surrounding the report. If commanders or law enforcement ask about the report, disclosures can only be made in accordance with exceptions to MRE 514 privilege.

(4) *Disclosure of confidential communications.* In cases where a victim elects Restricted Reporting, the SARC, SAPR VA, and healthcare personnel may not disclose confidential communications or the SAFE and the accompanying Kit to DoD law enforcement or command authorities, either within or outside the DoD, except as provided in this part. In certain situations, information about a sexual assault may come to the commander's or DoD law enforcement official's (to include MCIO's) attention from a source independent of the Restricted Reporting avenues and an independent investigation is initiated. In these cases, a SARC, SAPR VA, and healthcare personnel are prevented from disclosing confidential communications under Restricted Reporting, unless an exception applies. Improper disclosure of confidential communications or improper release of medical information are prohibited and may result in disciplinary action pursuant to the UCMJ or other adverse personnel or administrative actions.

(5) *Victim confiding in another person.* In establishing the Restricted Reporting option, DoD recognizes that a victim may tell someone (e.g., roommate, friend, family member) that a sexual assault has occurred before considering whether to file a Restricted or Unrestricted Report.

(i) A victim's communication with another person (e.g., roommate, friend, family member) does not, in and of itself, prevent the victim from later electing to make a Restricted Report. Restricted Reporting is confidential, not anonymous reporting. However, if the person to whom the victim confided the information (e.g., roommate, friend, family member) is in the victim's officer and non-commissioned officer chain of command or DoD law en-

forcement, there can be no Restricted Report.

(ii) Communications between the victim and a person other than the SARC, SAPR VA, or healthcare personnel are not confidential and do not receive the protections of Restricted Reporting.

(6) *Independent investigations.* Independent investigations are not initiated by the victim. If information about a sexual assault comes to a commander's attention from a source other than a victim who has elected Restricted Reporting or where no election has been made by the victim, that commander shall report the matter to an MCIO and an official (independent) investigation may be initiated based on that independently acquired information.

(i) If there is an ongoing independent investigation, the sexual assault victim will no longer have the option of Restricted Reporting when:

(A) DoD law enforcement informs the SARC of the investigation, and

(B) The victim has not already elected Restricted Reporting.

(ii) The timing of filing a Restricted Report is crucial. The victim must take advantage of the Restricted Reporting option before the SARC is informed of the investigation. The SARC then shall inform the victim of an ongoing independent investigation of the sexual assault. If an independent investigation begins after the victim has formally elected Restricted Reporting, the independent investigation has no impact on the victim's Restricted Report and the victim's communications and SAFE Kit remain confidential, to the extent authorized by law.

(7) *Mandatory reporting laws and cases investigated by civilian law enforcement.* Health care may be provided and SAFE Kits may be performed in a jurisdiction bound by State and local laws that require certain personnel (usually health care personnel) to report the sexual assault to civilian agencies or law enforcement. In some cases, civilian law enforcement may take jurisdiction of the sexual assault case, or the civilian jurisdiction may inform the military law enforcement or investigative community of a sexual assault that was reported to it. In such instances, it may not be possible for a victim to make a

Restricted Report or it may not be possible to maintain the report as a Restricted Report. To the extent possible, DoD will honor the Restricted Report; however, sexual assault victims need to be aware that their Restricted Report is not guaranteed due to circumstances surrounding the independent investigation and requirements of individual state laws. In order to take advantage of the Restricted Reporting option the victim must file a Restricted Report BEFORE the SARC is informed of an ongoing independent investigation of the sexual assault.

(b) *Initiating medical care and treatment upon receipt of report.* Healthcare personnel will initiate the emergency care and treatment of sexual assault victims and notify the SARC or the SAPR VA. See §105.11 of this part. Upon receipt of a Restricted Report, only the SARC or the SAPR VA will be notified. There will be no report to DoD law enforcement, a supervisory official, or the victim's chain of command by the healthcare personnel, unless an exception to Restricted Reporting applies or applicable law requires other officials to be notified. Regardless of whether the victim elects Restricted or Unrestricted Reporting, confidentiality of medical information will be maintained in accordance with applicable laws and regulations.

(c) *Implementing DoD dual objectives.* The DoD is committed to ensuring victims of sexual assault are protected; treated with dignity and respect; and provided support, advocacy, and care. The DoD supports effective command awareness and prevention programs. The DoD also strongly supports applicable DoD law enforcement and criminal justice procedures that enable persons to be held appropriately accountable for sexual assault offenses and criminal dispositions. To achieve the dual objectives of victim support and offender accountability, DoD preference is for complete Unrestricted Reporting of sexual assaults to allow for the provision of victims' services and to pursue accountability, as appropriate. However, Unrestricted Reporting may represent a barrier for victims to access services, when the victim desires no command or DoD law enforcement involvement. Consequently, the

DoD recognizes a fundamental need to provide a confidential disclosure vehicle via the Restricted Reporting option. This section provides procedural guidance and considerations to implement the DoD dual objectives.

(1) *Restricted Reporting impact.* Restricted Reporting will impact investigations and the ability of the offender's commander to hold the alleged offender accountable. However, such risks shall not outweigh the overall interest in providing a Restricted Reporting option to sexual assault victims.

(2) *Victim's perception of the military justice system.* The DoD seeks increased reporting by victims of sexual assault. A system that is perceived as fair and treats victims with dignity and respect, and promotes privacy and confidentiality may have a positive impact in bringing victims forward to provide information about being assaulted. The Restricted Reporting option is intended to give victims additional time and increased control over the release and management of their personal information and empowers them to seek relevant information and support to make more informed decisions about participating in the criminal investigation. A victim who receives support, appropriate care and treatment, and is provided an opportunity to make an informed decision about a criminal investigation is more likely to develop increased trust that the victim's needs are of concern to the command. As a result, this trust may eventually lead the victim to decide to pursue an investigation and convert the Restricted Report to an Unrestricted Report.

(d) *Reports and commanders.* (1) *Unrestricted Reports to commanders.* The SARC shall provide the installation commander of sexual assault victims with information regarding all Unrestricted Reports within 24 hours of an Unrestricted Report of sexual assault. This notification may be extended by the commander to 48 hours after the Unrestricted Report of the incident when there are extenuating circumstances in deployed environments.

(2) *Restricted Reports to commanders.* For the purposes of public safety and command responsibility, in the event

of a Restricted Report, the SARC shall report non-PII concerning sexual assault incidents (without information that could reasonably lead to personal identification of the victim or the alleged assailant (see exception in §105.8(e)(2)(ii)) only to the installation commander within 24 hours of the report. This notification may be extended by the commander to 48 hours after the Restricted Report of the incident when there are extenuating circumstances in deployed environments. The SARC's communications with victims are protected by the Restricted Reporting option and the MRE 514 (Executive Order 13593).

(i) Even if the victim chooses not to pursue an investigation, Restricted Reporting gives the installation commander a clearer picture of the reported sexual assaults within the command. The installation commander can then use the information to enhance preventive measures, to enhance the education and training of the command's personnel, and to scrutinize more closely the organization's climate and culture for contributing factors.

(ii) Neither the installation commander nor DoD law enforcement may use the information from a Restricted Report for investigative purposes or in a manner that is likely to discover, disclose, or reveal the identities of the victims unless an exception applies as provided in paragraph (e) of this section. Improper disclosure of Restricted Reporting information may result in discipline pursuant to the UCMJ or other adverse personnel or administrative actions.

(e) *Exceptions to Restricted Reporting and disclosures.* (1) The SARC will evaluate the confidential information provided under the Restricted Report to determine whether an exception applies.

(i) The SARC shall disclose the otherwise protected confidential information only after consultation with the SJA of the installation commander, supporting judge advocate or other legal advisor concerned, who shall advise the SARC whether an exception to Restricted Reporting applies. In addition, the SJA, supporting judge advocate or other legal advisor concerned

will analyze the impact of MRE 514 on the communications.

(ii) When there is uncertainty or disagreement on whether an exception to Restricted Reporting applies, the matter shall be brought to the attention of the installation commander for decision without identifying the victim (using non-PII information). Improper disclosure of confidential communications under Restricted Reporting, improper release of medical information, and other violations of this guidance are prohibited and may result in discipline pursuant to the UCMJ or State statute, loss of privileges, loss of certification or credentialing, or other adverse personnel or administrative actions.

(2) The following exceptions to the prohibition against disclosures of Restricted Reporting authorize a disclosure of a Restricted Report only if one or more of the following conditions apply:

(i) Authorized by the victim in writing.

(ii) Necessary to prevent or mitigate a serious and imminent threat to the health or safety of the victim or another person; for example, multiple reports involving the same alleged suspect (repeat offender) could meet this criteria. See similar safety and security exceptions in MRE 514 (Executive Order 13593).

(iii) Required for fitness for duty or disability determinations. This disclosure is limited to only the information necessary to process duty or disability determinations for Service members.

(iv) Required for the supervision of coordination of direct victim treatment or services. The SARC, SAPR VA, or healthcare personnel can disclose specifically requested information to those individuals with an official need to know, or as required by law or regulation.

(v) Ordered by a military official (e.g., a duly authorized trial counsel subpoena in a UCMJ case), Federal or State judge, or as required by a Federal or State statute or applicable U.S. international agreement. The SARC, SAPR VA, and healthcare personnel will consult with the installation commander's servicing legal office, in the same manner as other recipients of

privileged information, to determine if the exception criteria apply and whether a duty to disclose the otherwise protected information is present. Until those determinations are made, only non-PII shall be disclosed.

(3) Healthcare personnel may also convey to the victim's unit commander any possible adverse duty impact related to the victim's medical condition and prognosis in accordance with DoD Directive 5400.11-R.⁷ However, such circumstances do not otherwise warrant a Restricted Reporting exception to policy. Therefore, the confidential communication related to the sexual assault may not be disclosed. Improper disclosure of confidential communications, improper release of medical information, and other violations of this part and 32 CFR part 103 are prohibited and may result in discipline pursuant to the UCMJ or State statute, loss of privileges, or other adverse personnel or administrative actions.

(4) The SARC or SAPR VA shall inform the victim when a disclosure in accordance with the exceptions in this section is made.

(5) If a SARC, SAPR VA, or healthcare personnel make an unauthorized disclosure of a confidential communication, that person is subject to disciplinary action. Unauthorized disclosure has no impact on the status of the Restricted Report. All Restricted Reporting information is still confidential and protected. However, unauthorized or inadvertent disclosures made to a commander or law enforcement shall result in notification to the MCIO.

(f) *Actionable rights.* Restricted Reporting does not create any actionable rights for the victim or alleged offender or constitute a grant of immunity for any actionable conduct by the offender or the victim.

§ 105.9 Commander and management procedures.

(a) *SAPR Management.* Commanders, supervisors, and managers at all levels are responsible for the effective implementation of the SAPR program and policy. Military and DoD civilian offi-

cials at each management level shall advocate a strong SAPR program and provide education and training that shall enable them to prevent and appropriately respond to incidents of sexual assault.

(b) *Installation commander SAPR response procedures.* Each installation commander shall develop guidelines to establish a 24 hour, 7 day per week sexual assault response capability for their locations, including deployed areas. For SARCs that operate within deployable commands that are not attached to an installation, senior commanders of the deployable commands shall ensure that equivalent SAPR standards are met.

(c) *Commander SAPR response procedures.* Each Commander shall:

(1) Encourage the use of the commander's sexual assault response protocols for Unrestricted Reports as the baseline for commander's response to the victim, an offender, and proper response of a sexual assault within a unit. The Commander's Sexual Assault Response Protocols for Unrestricted Reports of Sexual Assault are located in the SAPR Policy Toolkit, on www.sapr.mil. These protocols may be expanded to meet Military Service-specific requirements and procedures.

(2) Meet with the SARC within 30 days of taking command for one-on-one SAPR training. The training shall include a trends brief for unit and area of responsibility and the confidentiality requirements in Restricted Reporting. The commander must contact the judge advocate for training on the MRE 514 privilege.

(3) Require the SARC to:

(i) Be notified of every incident of sexual assault involving Service members or persons covered in this part, in or outside of the military installation when reported to DoD personnel. When notified, the SARC or SAPR VA shall respond to offer the victim SAPR services. All SARCs shall be authorized to perform VA duties in accordance with service regulations, and will be acting in the performance of those duties.

(A) In Restricted Reports, the SARC shall be notified by the healthcare personnel or the SAPR VA.

⁷ Available: <http://www.dtic.mil/whs/directives/corresp/pdf/540011p.pdf>.